EX PARTE OR LATE FILED

DOW, LOHNES & ALBERTSON

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

ORIGINAL

LAURA H. PHILLIPS
DIRECT DIAL 202·776·2824

WASHINGTON, D.C.

1200 NEW HAMPSHIRE AVENUE, N.W. · SUITE 800 · WASHINGTON, D.C. 20036-6802
TELEPHONE 202·776·2000 · FACSIMILE 202·776·2222

ONE RAVINIA DRIVE · SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770·901·8800
FACSIMILE 770·901·8874

July 25, 1996

DOCKET FILE COPY ORIGINAL

RECEIVED
JUL 2 5 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket Nos. 96-98 and 95-185
NOTICE OF ORAL EX PARTE PRESENTATIONS

Dear Mr. Caton:

Today, Alexander Netchvolodoff and Alexander Wilson of Cox Communications, Inc. met with Commissioner Rachelle Chong and Daniel Gonzalez, Legal Advisor to Commissioner Chong regarding outstanding issues in the above-captioned dockets. Also enclosed are three documents that were distributed at that meeting. Please associate them with each docket.

If there are any questions regarding these matters, please contact the undersigned.

Respectfully submitted,

Laura Phillips

Laura H. Phillips
Counsel for Cox Communications, Inc.

LHP/css
Enclosure
cc: Commissioner Rachelle Chong
Daniel Gonzalez, Esq

No. of Copies rec'd 0+2
List ABCDE

RECEIVED
JUL 2 5 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 25, 1996

COX COMMUNICATIONS, INC.
CC Docket No. 95-185

As Cox has explained in this proceeding, the Commission has complete jurisdiction over LEC-to-CMRS interconnection. Any other conclusion subjects CMRS providers to state regulation of essentially interstate CMRS services, treatment that Congress expressly sought to eliminate in the 1993 Budget Act. If the Commission inappropriately but nevertheless proceeds to require CMRS providers to negotiate interconnection under the state-by-state negotiation/arbitration provisions of the 1996 Act, there are several critical elements that must be contained in any such Commission decision. The Commission must:

Confirm the immediate availability to CMRS providers of any Commission prescribed interim rate for reciprocal transport and termination;

Confirm that any currently effective interconnection contracts between CMRS providers and incumbent LECs do not bar application of such an interim rate pending negotiations;

Confirm that CMRS providers may immediately revise any existing incumbent LEC interconnection contracts by referencing price or other terms made available to any other interconnector pursuant to an interconnection agreement as provided in Section 252(i);

Expressly recognize that the costs of reciprocal transport and termination between LECs and CMRS providers are indeed reciprocal, i.e., CMRS providers incur costs by providing both transport and termination for calls originated on the incumbent LEC network that are completed by the CMRS network; and

Expressly prohibit incumbent LECs or state commissions from attempting to require that CMRS providers become certified as competitive LECs subject to substantive state regulation in order to benefit from any pro-competitive state policies on interconnection.

Each of these elements is examined in more detail in the following attachment.

Confirm the immediate availability to CMRS providers of any Commission-prescribed interim rate for reciprocal transport and termination.

Last December the Commission properly concluded that CMRS providers have no choice but to interconnect to incumbent LECs at rates that fail by a wide margin to reflect both the actual cost of interconnection and the mutual benefit provided to each carrier by its ability to reach the other's customers. In its extremely pro-competitive Notice, the Commission proposed an interim rate of bill and keep for CMRS-to-LEC interconnection.

In light of the new requirements placed on incumbent LECs by the 1996 Act, the Commission is now considering the need for interim rates to be applied for the reciprocal transport and termination functions ILECs must provide to requesting interconnecting carriers under Section 251(b). If the Commission concludes that CMRS interconnection should be treated similarly to CLEC inteconnection, the same interim rate determined to be reasonable by this Commission must be made immediately available to all CMRS providers. Otherwise ILECs can continue to demand higher, non-cost based rates from CMRS interconnectors in a perversion of both Congress' and the Commission's pro-competitive goals for wireless.

Confirm that any currently effective interconnection contracts between CMRS providers and incumbent LECs do not bar application of such an interim rate pending negotiations under Section 252.

In confirming that any interim rate available for use by a CLEC is also available to CMRS providers, the Commission should affirm what it acknowledged last December, i.e., that current interconnection contract rates are the product of one-sided "negotiations" with monopolists. Such rates can and should be replaced by the interim rate at the election of the CMRS provider. Failure to permit the immediate establishment of a more reasonable interim rate would relegate CMRS providers to the back of the line on interconnection negotiations or renegotiations, and would allow ILECs to continue to extract highly inflated rates from their potential competitors. It would be extremely disruptive and competitively harmful if the Commission sought to distinguish "new" and "old" CMRS contracts. All CMRS providers should share in the benefits of an interim rate.

Any ILEC arguments about their dependence on the revenues of existing CMRS contracts are false and misleading. These revenues are a tiny fraction of overall LEC revenues. LEC claims that local rates will increase if they lose CMRS interconnection revenues entirely ignore that LECs operate under Price Cap regulations that do not ensure that the LEC can increase its prices in one area if its revenues decrease in another. These arguments present no reason to continue to allow ILECs to charge rates that they openly acknowledge far exceed their costs.

Finally, as the Commission has demonstrated on previous occasions, there is no doubt that the Commission has ample legal authority to reform contracts between carriers. There is no legal bar to application of an interim rate to existing CMRS contracts. CMRS providers who had no choice in signing one-sided, unreasonable contracts -- many of which simply reflect existing tariffed rates -- should not be held to these terms while at the same time other competitors receive the benefit of interim rates under the Commission's implementation of the 1996 Act.

Confirm that CMRS providers may immediately revise any existing incumbent LEC interconnection contracts by referencing price or other terms made available to any other interconnector pursuant to an interconnection agreement as provided in Section 252(i).

Section 252(i) requires that LECs "shall make available any interconnection, service, or network element provided under any agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). This obligation to make revised rates generally available if the LEC agrees to them in a negotiated arrangement must extend to CMRS providers as well as other competitive LECs.

Expressly recognize that the costs of reciprocal transport and termination between LECs and CMRS providers are indeed reciprocal, i.e., CMRS providers incur costs by providing both transport and termination for calls originated on the incumbent LEC network that are completed by the CMRS network.

Both interconnectors incur costs for their reciprocal transport and termination of calls. While Cox has demonstrated that the costs of the incumbent LEC are tiny, the cost to the CMRS provider is not well documented. It is plain, nevertheless, that the CMRS network includes substantial investments in transport facilities that link cells, microcells and switches in the same manner that the ILEC network has interoffice trunks for transport of calls among tandem and end offices. Any express recognition by the Commission of additional ILEC "transport" costs for reciprocal transport and termination under Section 252(d)(2) must also expressly recognize there is a reciprocal cost for transport as well as termination of LEC-originated calls within the CMRS network.

Expressly prohibit incumbent LECs or state commissions from attempting to require that CMRS providers become certified as competitive LECs subject to substantive state regulation in order to benefit from any pro-competitive state policies on interconnection.

Numerous commenters have presented the Commission with evidence that several otherwise pro-competitive states are refusing to allow CMRS providers the benefit of pro-competitive reforms simply because CMRS providers are no longer subject to state substantive jurisdiction. These states require that the CMRS provider "volunteer" to be regulated as a competitive LEC even though states have no authority to withhold the benefits of competition from CMRS providers. Some ILECs have attempted to slow negotiations with CMRS providers by suggesting that they need only negotiate interconnection with entities certified by the relevant state commission. The Commission must halt these perverse developments by prohibiting this practice.

COST STUDIES IN RECORD DEMONSTRATING THAT INCREMENTAL COST OF TRANSPORTING AND TERMINATING A LOCAL CALL IS APPROXIMATELY 0.2 CENTS PER MINUTE, ON AVERAGE (INCLUDES END OFFICE SWITCHING, TRANSPORT AND TANDEM SWITCHING):

Gerald Brock, "The Incremental Cost of Local Usage," filed in CC Docket No. 94-54 by Cox Communications, Inc. on March 21, 1995 (survey of literature)

Testimony of Paula L. Brown, Managing Director, NYNEX Corporation, in Massachusetts DPU Docket No. 93-125, June 14, 1993 at Workpaper 4, Attachment 3 (worksheets detailing costs of transporting and terminating a local call)

GTE Service Corporation, Letter of Whitney Hatch, Assistant Vice President, Regulatory Affairs, GTE Service Corporation, to William F. Caton, Acting Secretary, FCC, July 11, 1996, CC Docket 96-98 (results of Pacific Bell's Cost Proxy Model)

Bridger Mitchell, "Incremental Costs of Telephone Access and Local Use," (Santa Monica, CA: The Rand Corporation, 1990) (public engineering study of incremental costs using digital technology; used LEC-provided cost data; GTE, Pacific Bell, the California Public Utilities Commission and the RAND Corporation participating)

New England Telephone engineering study prepared at direction of Massachusetts PUC, reported in Lewis J. Perl and Jonathan Falk, "The Use of Econometric Analysis in Estimating Marginal Cost," NERA Report, April 6, 1989

Hatfield Model, Version 2.2, Release 1, CC Docket 96-98, May 30, 1996 (cost proxy model)

Analysis of Florida PSC Staff, Florida Docket No. 950985-TP (April 5, 1996), and Bell South Docket No. PSC-96-0445-FOF-TP (March 29, 1996)(review of proprietary cost data from GTE and Bell South)

Analysis of Maryland PSC Staff, Order No. 72348 (December 28, 1995)(review of proprietary cost data from Bell Atlantic)

LEC ASSERTIONS DISPUTING 0.2 CENT PER MINUTE INCREMENTAL COST ESTIMATE

Pacific Bell: LRIC of call termination is in the range of 0.5 cent to 1.0 cent per minute (no supporting cost data, engineering or econometric studies; refuted by

Pacific Bell's own cost proxy model and information it provided for RAND Corporation study)

USTA: Switched access costs, on average, are 1.3 cents per minute (based on flawed econometric study which in any event found that termination costs range from 0.2 to 1.3 cents per minute; admittedly includes overhead costs not normally included in incremental cost study)

SYNOPSIS OF STATE PUC ORDERS CONCERNING RECIPROCAL COMPENSATION RATES
(Updated as of July 25, 1996)

A growing number of states have adopted policies on reciprocal landline termination rates. In the absence of credible cost information from incumbent LECs, many states have opted for interim bill and keep arrangements as the most pro-competitive interim reciprocal compensation arrangements. This section lists the states that have embraced bill and keep as an interim compensation mechanism as well as the states that have forged other interim compensation solutions.

States Adopting Interim Bill and Keep

STATE	SYNOPSIS
Arizona	The Corporation Commission has adopted rules for the mutual exchange of traffic on an interim bill and keep basis. If after the interim rules have been in effect for 24 months, parties have not reached mutual agreements, the rules permit the filing of tariffs proposing non-usage sensitive permanent compensation arrangements.
California	The Public Utility Commission has required the use of bill and keep on an interim basis for one year. Permanent rates will be set after review of LEC cost studies.
Colorado	The Public Utility Commission has adopted rules for the mutual exchange of traffic on an interim bill and keep basis. Bill and keep will remain in effect for up to three years or six months after a permanent number portability solution is implemented.
Connecticut	The Department of Public Utility Control has required the use of bill and keep for 18 months, followed by negotiated cost-based rates.
Florida	The Florida Commission adopted bill and keep as the preferred reciprocal compensation method. Carriers can file tariffs to recover costs if traffic proves to be significantly out of balance.
Iowa	The Utilities Board has required the use of bill and keep on an interim basis pending approval of cost-based tariffs.
Michigan	The Public Service Commission has required on an interim basis a usage based charge of 1.5 cents per minute with bill and keep

	in effect if the traffic volume of the two carriers is within 5 percent of each other. GTE and Ameritech have until August 5, 1996 to file local traffic termination TSLRIC studies.
Oregon	The Public Utility Commission has required the use of bill and keep on an interim basis for up to two years.
Tennessee	The Public Utility Commission has adopted rules requiring bill and keep for one year beginning with the date on which a new entrant reaches an interconnection agreement with the incumbent LEC.
Texas	The Public Utility Commission implemented rules requiring bill and keep for nine months after new carrier entry.
Washington	The Commission has required the use of bill and keep until number portability is implemented and other barriers are removed, followed by negotiated rates that reflect the manner in which costs are caused (i.e. primarily non-traffic sensitive). The Commission has ordered both GTE and U S West to file cost studies for capacity-based local interconnection charges by July 1, 1996.
Wisconsin	Very recently adopted interim bill and keep with the possibility of long term bill and keep if traffic proves to be reasonably balanced. The Commission's order has not yet been released.

States Adopting Other Compensation Mechanisms

STATE	SYNOPSIS
Hawaii	Permits bill and keep, but leaves compensation arrangements to intercarrier negotiation.
Illinois	The Commerce Commission has required a usage-based charge of 0.5 cents per minute for end office and 0.75 cents per minute for tandem. These figures include common costs and contributions.
Ohio	Ohio favors negotiated arrangements and allows carriers to recover their incremental costs of termination, plus an allocation of joint and common costs. All interim interconnection arrangements that adopt bill and keep for a year will be permitted as *per se* reasonable.
Pennsylvania	The Public Utilities Commission has required all carriers to pay into an escrow account pending adoption of cost-based rates.

New York	The Public Service Commission has established a framework in which CLECs pay compensation rates for terminating calls at a rate roughly half of the retail rate to create an imputation safeguard and avoid price squeezes.
Maryland	The Public Service Commission has required a usage based charge of .3 cents per minute for end office termination and .5 cents per minute for tandem termination. These figures include common costs and contributions.
Massachu-setts	The DPU tentatively set termination charges at 1.5 cents per minute but will revisit the compensation issue when the FCC completes its interconnection proceeding.